

# **TOWN OF WHITMAN CABLE TELEVISION RENEWAL LICENSE**

## **INTRODUCTION**

WHEREAS, Comcast of Massachusetts I, Inc., (hereinafter "Comcast" or "Licensee"), is the duly authorized holder of a license to operate a Cable System in the Town of Whitman, Massachusetts (hereinafter the "Town"), said license having originally commenced on April 5, 1978;

WHEREAS, Comcast filed a written request for a renewal of its license by letter dated April 12, 2000 in conformity with the Cable Communications Policy Act of 1984 and filed a renewal proposal dated August 1, 2002, thereafter further amended by Comcast;

WHEREAS, there has been an opportunity for public comment, as required by Section 626(h) of the Cable Communications Policy Act;

WHEREAS, the Town's Board of Selectmen, as the Issuing Authority, finds that the renewal of Comcast's License is appropriate in light of its past performance, compliance with the terms of its existing license, and the terms contained in this Renewal License to meet the future cable related needs and interests.

NOW THEREFORE, after due and full consideration, the Town and Comcast agree that this Renewal License is issued upon the following terms and conditions:

## **ARTICLE 1 DEFINITIONS**

### **Section 1.1 --- DEFINITION:**

The following terms used in this Renewal License shall have the following meanings:

(a) "Access" and "Access Corporation": "Access" means the right or ability of any Whitman resident and/or any Person affiliated with a Whitman institution to use designated PEG Access facilities, equipment and/or channels of the Cable System, subject to the conditions and procedures established for such use, in accordance with this Renewal License and 47 USC §531. "Access Corporation" means a non-profit corporation designated by the Issuing Authority to manage and/or operate public, educational and governmental access programming and/or channel in the Town.

(b) "Basic Service" the term "Basic Cable Service" means any service tier which includes the retransmission of local television Broadcast signals and Public, Educational and Governmental Access ("PEG") Access Channels.

(c) "Broadcast" means over-the-air transmission by a radio or television station.

(d) Cable Act means Public Law No. 98-549, 98 Stat. 2779 (1984) (the Cable Communication Policy Act of 1984), as amended by Public Law No. 102-385, 106 Stat. 1460 (1992) (the Cable Television Consumer Protection and Competition Act of 1992, as further amended by Public Law No. 104-458, 110 Stat. 56 (1996) (the Telecommunications Act of 1996) or as such law may hereafter be amended or supplemented.

(e) Cable Division - The Cable Television Division of the Massachusetts Department of Telecommunications and Energy established pursuant to Chapter 166A of the General Laws of the Commonwealth of Massachusetts.

(f) Cable Service - the term "cable service" means (A) the one-way transmission to subscribers of (i) video Programming, or (ii) other Programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video Programming or other Programming service.

(e) Cable System- The cable system, as defined in the Cable Act, owned, constructed, installed, operated and maintained by Licensee in the Town of Whitman for the provision of Cable Service.

(h) Drop - The standard coaxial cable used by the Licensee, that connects a home or building to the Subscriber Network or Institutional Network..

(i) Effective Date - September 30, 2003.

(j) FCC - Federal Communications Commission.

(k) Gross Annual Revenues - Consideration of any form or kind received by the Licensee for the provision of Cable Service(s) over the Cable System including, without limitation: the distribution of any Cable Service over the Cable System; Basic Service monthly fees and all other Cable Service fees and/or Cable Service charges received from Subscribers; installation, reconnection, downgrade, upgrade and any similar charges; fees paid on all Subscriber fees, interest collected on Subscriber fees and/or charges; all commercial Subscriber revenues; fees paid for channels designated for commercial use; converter, remote control and other equipment rentals and/or leases and/or sales; studio and other facility and/or equipment rentals; all home shopping service(s) revenues and advertising revenues. Gross Annual Revenues shall not include any fee or tax on services furnished by the Licensee and paid to any governmental entity and collected by the Licensee on behalf of such entity. In the event that an affiliate of the Licensee ("affiliate") is responsible for advertising, advertising revenues shall be deemed to be the pro-rata portion of advertising revenues, paid to the Cable System by an affiliate for said affiliate's use of the Cable System for the carriage of advertising. Gross Annual Revenues shall also include the Gross Revenue of any other Person which is derived directly or indirectly from or in connection with the operation of the Cable System to the extent that said revenue is derived, through a means which has the effect of avoiding payment of License Fees to the Town that would otherwise be paid herein. It is the intention of the parties hereto that Gross Annual Revenues shall only include such consideration of Affiliates and/or Persons relating to Signal carriage over the Cable System and not the gross revenues of any such affiliates and/or Persons itself, where unrelated to Signal carriage. Gross Annual Revenues shall also be adjusted for actual bad debt that is written off, consistent with Generally Accepted Accounting principles; provided, however that all or any part of any such bad debt that is written off, but subsequently collected, shall be included in Gross Annual Revenues in the period so collected.

(l) Issuing Authority - The Board of Selectmen of the Town of Whitman, Massachusetts.

(m) License or Renewal License- The non-exclusive Cable Television Renewal License granted to the Licensee by this Instrument

(n) Licensee - Comcast of Massachusetts I, Inc., or any successor or transferee in accordance with the terms and conditions in this Renewal License.

(o) License Fee – The payments to be made by the Licensee to the Town of Whitman which shall have the meaning as set forth in Section 622(g) of the Cable Act and M.G.L. Chapter 166A, Section

9.

(p) Outlet - An interior or exterior receptacle that connects a television set or equipment to the Cable System.

(q) PEG - The acronym for “public, educational and governmental”, used in conjunction with Access channels, support and facilities.

(r) PEG Access Programming - Programming produced by any Whitman residents or organizations, schools and government entities and the use of designated facilities, equipment and/or channels of the Cable System in accordance with 47 U.S.C. 531 and this Renewal License.

(s) Person - Any corporation, partnership, limited partnership, association, trust, organization, other business entity, individual or group of individuals acting in concert, other than the Licensee.

(t) Programming - As defined in the Cable Act.

(u) Signal means any transmission of electromagnetic or optical energy which carries Programming from one location to another.

(v) Standard Drop - The standard one hundred fifty foot (150 ft.) Drop.

(w) Subscriber - A person or entity who contracts with the Licensee for, and lawfully receives, the video signals and Cable Services distributed by the Cable System.

(x) Subscriber Network - The Cable System to be operated and maintained by the Licensee, over which Signals can be transmitted to Subscribers.

(y) Town - The Town of Whitman, Massachusetts.

## **ARTICLE 2**

### **GRANT OF RENEWAL LICENSE**

#### **Section 2.1 - GRANT OF RENEWAL LICENSE**

(a) Pursuant to the authority granted by Chapter 166A of the General Laws of the Commonwealth of Massachusetts, and the Cable Act, as amended, the Issuing Authority hereby grants a non-exclusive Cable Renewal License to the Licensee, authorizing and permitting said Licensee to construct, operate and maintain a Cable System within the municipal limits of the Town of Whitman.

(b) This Renewal License is granted under and in compliance with the Cable Act and Chapter 166A of the General Laws of the Commonwealth of Massachusetts, and in compliance with all rules and regulations of the FCC and the Cable Division and all other applicable rules and regulations in force and effect during the period for which this Renewal License is granted.

(c) Subject to the terms and conditions herein, the Issuing Authority hereby grants to the Licensee the right to construct, upgrade, install, attach, operate and maintain a Cable System, including such lines, cables, fiber optics and other property and equipment as are necessary and appropriate to the operations of the Cable System, in, under, over, along, across and upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places under the jurisdiction of the Town within the municipal boundaries and subsequent additions thereto, including property over which the Town has a sufficient easement or right-of-way, for the purposes of reception, transmission, amplification, origination, distribution or redistribution of Cable Services and Signals in accordance with the laws of the United States of America and the Commonwealth of Massachusetts and the bylaws of the Town of Whitman. In exercising rights pursuant to this Renewal License, the Licensee shall not endanger with the lives of Persons, interfere with any installations of the Town or any other Persons permitted to use the Public Ways and places.

#### **Section 2.2 - TERM:**

The term of this Renewal License shall be for a period of ten (10) years and shall commence on September 30, 2003, and shall terminate at midnight on September 29, 2013, unless sooner terminated as provided herein.

#### **Section 2.3 - POLICE AND REGULATORY POWERS**

The Licensee's rights are subject to the powers of the Town to adopt and enforce general bylaws necessary for the safety and welfare of the public, provided that such bylaws are of general applicability and not specific to the Cable System, the Licensee, or this License.

#### **Section 2.4 - NON-EXCLUSIVITY OF LICENSE**

(a) This Renewal License shall not affect the right of the Issuing Authority to grant to any other Person a license or right to occupy or use the Public Ways or streets, or portions thereof, for the construction, upgrade, installation, operation or maintenance of a Cable System within the Town of Whitman; or the right of the Issuing Authority to permit the use of the public ways and places of the Town for any purpose whatsoever. The Licensee hereby acknowledges the Issuing Authority's right to make such grants and permit such uses.

(b) To the extent allowed by applicable law(s), the grant of additional cable television license(s) shall not be on terms more favorable or less burdensome than those contained in this Renewal License. The grant of any additional cable television license(s) shall be at the sole discretion of the Issuing Authority.

(c) The issuance of additional Cable Television license(s) shall be subject to all applicable federal and state laws, including G.L.c. 166A and applicable regulations promulgated thereunder.

(d) In the event that a Multichannel Video Programming Provider, which is (i) not in any way an affiliate of the Licensee and (ii) not a satellite provider, hereafter provides Programming to residents of the Town, and is not required by applicable law to be licensed by the Issuing Authority, and to the extent that the Licensee reports to the Issuing Authority, in writing, that the providing of such Programming of such Multichannel Video Provider is having a substantial negative impact upon the financial viability of the Licensee's Cable System in the Town, the Licensee may request, in writing, that the Issuing Authority convene a public hearing on that issue. The Issuing Authority shall convene said hearing within ninety (90) days of receipt of a hearing request from the Licensee.

(i) Along with said written request, the Licensee shall provide the Issuing Authority with a written basis and written reasons for its determination of such substantial negative impact. At the public hearing(s), the Issuing Authority shall afford the Licensee an opportunity to present the basis and the reasons for its determination. The Licensee shall provide the Issuing Authority with such financial or other relevant information as is reasonably requested.

(ii) Should the Licensee demonstrate that the Programming of such Multichannel Video Programming Provider is having a substantial negative impact upon the financial viability of the Licensee's Cable System in the Town, the Issuing Authority shall consider and negotiate, in good faith, equitable amendments to this Renewal License.

(iii) The Licensee shall not request, or receive, amendments in connection with any services, facilities, funding, and/or fee requirements in this Renewal License that have been satisfied as of the date of the public hearing in this Section 2.4(d).

(e) As of the Execution Date of this Renewal License, the parties hereto agree that any Multichannel Video Programming Provider(s) which are (i) not in any way an Affiliate of the Licensee and (ii) not a satellite provider, and are currently providing Programming to residents in the Town, are having no

substantial negative impact upon the financial viability of the Licensee's Cable System in the Town.

## **Section 2.5 - REMOVAL OR ABANDONMENT**

(a) Pursuant to M.G.L. 166(a), Section 5(f), upon termination of this Renewal License, the Licensee shall remove its supporting structures, poles, transmission and distribution systems and all other appurtenances. If such removal is not complete within six (6) months after such termination, the Issuing Authority may deem any property not removed as having been abandoned.

(b) Notwithstanding the foregoing, in the event that this Renewal License is revoked for cause, and all appeals have been exhausted, or that it expires, and the Issuing Authority determines not to renew this Renewal License, and all appeals have been exhausted, the Licensee, if requested by the Issuing Authority, shall implement the provisions of Section 627 of the Cable Act, by transferring the Cable System in accordance with 47 U.S.C. §547.

## **Section 2.6 --- TRANSFER OF THE RENEWAL LICENSE**

(a) To the extent required by M.G.L. c. 166A, §7, 207 CMR 4.04, 47 CFR §76.502, and any other applicable state or federal law, neither this Renewal License, nor control thereof, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any Person, company and/or other entity holding such Renewal License to any other Person, company and/or other entity, without the prior written consent of the Issuing Authority, which consent shall not be arbitrarily or unreasonably withheld or delayed. Such consent shall be given only after a hearing upon a written application therefore on forms prescribed by the Cable Division and/or the FCC. The application for consent to a transfer shall be signed by the Licensee and by the proposed transferee or assignee or by their representatives, evidence of whose authority shall be submitted with the application.

(b) For purposes of this section, the word "control" shall be consistent with the definition of such term found in 207 CMR 4.00.

(c) The consent or approval of the Issuing Authority to any assignment or transfer of the Renewal License granted to the Licensee shall not constitute a waiver or release of the rights of the Town in and to the Public Ways and streets or any other rights of the Town under this Renewal License, and any such transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Renewal License.

(d) Any transfer shall be subject to all of the terms and conditions contained in this Renewal License.

(e) Any transfer of the Cable System without complying with this Section shall be null and void.

### **ARTICLE 3**

### **SYSTEM SPECIFICATIONS AND CONSTRUCTION**

#### **SECTION 3.1 - AREA TO BE SERVED**

(a) The service area shall continue to be the entire Town of Whitman.

(b) Service shall be provided to every dwelling occupied by a person requesting Cable Service, subject to the limitations set forth herein, provided that the Licensee is able to obtain from property owners any necessary easements and/or permits in accordance with Section 621(a)(2) of the Cable Act.

(c) Installation costs shall conform with the 1992 Cable Consumer Protection Act, and regulations thereunder. Any dwelling unit within one hundred fifty feet (150 ft.) aerial or one hundred fifty feet (150 ft.) underground of the cable plant shall be entitled to a standard installation rate, unless the sub-surface is a hard surface or requires boring through rock or a similar hard surface (i.e. concrete, asphalt, etc.). Installations of more than one hundred fifty feet (150 ft.) or which involve a hard surface or which require boring shall be provided at a rate based on actual costs plus a reasonable rate of return. (For installations more than one hundred fifty feet (150 ft.), not involving a hard surface, the first one hundred fifty feet (150 ft.) shall be at the standard installation rate.)

(d) Provided Licensee has at least ninety (90) days prior notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, Licensee shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. If a substantial quantity of cable is required for a large subdivision and said quantity is not in stock, the Licensee shall be allowed additional time for said installation. At a minimum, the Issuing Authority agrees to require as a condition of issuing a permit for open trenching to any utility developer that (A) the utility or developer give the Licensee at least (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Licensee with reasonable access to the open trench.

#### **SECTION 3.2 - SUBSCRIBER NETWORK**

The Licensee shall maintain its 750 MHz Cable System in accordance with applicable federal and State law.



### **SECTION 3.3 - CABLE SERVICE TO MUNICIPAL AND PUBLIC SCHOOL BUILDINGS**

(a) The Licensee shall continue to provide and maintain, without charge to the Town, the standard activated Subscriber network drops and outlets located on Town buildings or institutions, which existed as of the Effective Date of this Renewal License. In addition to such Drops and Outlets, the Licensee shall provide Basic level of Cable Service, at no charge to the Town. A list of such locations is attached herein as **Exhibit A**.

(b) The Licensee shall provide, install and maintain one (1) Subscriber Network Cable Drop and one (1) Subscriber Network Outlet, without charge to the Town or the public schools, to all new municipal and public school buildings along its Subscriber Network route, designated in writing by the Issuing Authority. Said installations, which are standard aerial installations, shall be completed within ninety (90) days after receipt of said written request. Said installations which are standard underground installations shall be completed within one hundred eighty (180) days after receipt of said written request, weather permitting. The Licensee shall not be required to provide an Outlet to such buildings where non-standard installation is required, unless the Issuing Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-standard installation. Installations of more than one hundred fifty feet (150 ft.) or which involve a hard surface or which require boring shall be deemed "non-standard" installation, and shall be provided at a rate based on actual costs plus a reasonable rate of return. If additional Outlets are provided to such buildings, the Town or its designee shall pay the usual installation and service fees associated therewith. The Licensee shall discuss the location of each Drop and Outlet with the proper Town official(s) prior to the installation of said Drop and Outlet. With respect to existing Subscriber Network Cable Drops and Subscriber Network Outlets at Town and public school buildings, the Licensee shall continue to maintain said Drops and Outlets.

(c) The Licensee shall supply one (1) Converter for each Outlet, without charge to the Town if required for the reception of monthly Basic Service. The Licensee shall maintain such Converters for normal wear and tear, at its sole cost and expense; provided, however, that the Town shall be responsible for repairs and/or replacement necessitated by any acts of vandalism or theft.

### **SECTION 3.4 - VIDEO RETURN LINE (FORMERLY "INSTITUTIONAL NETWORK")**

(a) The Licensee shall continue to provide and maintain the existing Video Return Line (formerly the Institutional Network) for the transmission of composite video and audio transmissions only. Said Video Return Line shall be for the exclusive use of the Town, Whitman-Hanson Regional Schools and the Access Corporation, if any. The Town may not lease any portion of the Video Return Line to any third

party for commercial purposes. Said Video Return Line shall be capable of transmitting composite video and audio transmissions from and among the municipal and school buildings identified in **Exhibit B** and returned over the Subscriber Network.

(b) Unless otherwise provided herein, the Town and its designated Video Return Line users shall be solely responsible for any and all interface/end user equipment including but not limited to, video production equipment. Licensee shall be responsible for all headend (including the Video Return Line hub) equipment owned by Licensee necessary to make interaction possible with the Subscriber Network, in order that PEG Access video and audio Programming originating from the origination points listed in **Exhibit B** (existing I-Net outlets/drops) can be sent upstream on a video return channel and then switched to a downstream Subscriber Network PEG channel provided herein, including modems, routers, bridges, modulators, demodulators, headend video processors and switchers.

(c) The Licensee shall be responsible for maintaining the Video Return Lines in accordance with the FCC Rules and Regulations, Part 76.

(d) The Licensee shall have no obligations for the transmission of data over the Institutional Network.

(e) The Town shall release the Licensee at all times during the term of this Renewal License and after its expiration from any and all claims, actions and/or proceedings arising out of the actions of the Town, its designee(s) and/or departments in transmitting, conveying or otherwise carrying, or failing to transmit, convey or otherwise carry PEG Access Signals on the video return line, excepting claims, actions and/or proceedings arising out of negligence, if any, of Licensee with respect to said Video Return Lines.

(f) The Licensee shall maintain one (1) Video Return Line Drop at no charge to each of the municipal and public school building identified in Exhibit B. Additional Video Return Line Drops, if any, in excess of the above shall be installed by the Licensee subject to payment by the Town of the Licensee's actual costs of said installation(s).

### **SECTION 3.5 - EMERGENCY AUDIO ALERT**

The Subscriber Network shall comply with the FCC's Emergency Alert System ("EAS") regulations.

### **SECTION 3.6 - CONSTRUCTION MAPS**

Upon written request, the Licensee shall file with the Issuing Authority or its designee strand maps of the Cable System in hard copy. Said maps shall also be provided, upon written request, in electronic

format, if the Licensee has such capability. If changes are made to the Cable System such that a map(s) is no longer accurate, the Licensee shall file with the Issuing Authority updated strand map(s), within forty-five (45) days of a written request, and further to use its best efforts to provide the relevant portion(s) of such map(s) in a shorter time period in an emergency.

## **ARTICLE 4**

### **TECHNOLOGICAL AND SAFETY STANDARDS**

#### **SECTION 4.1 - SYSTEM MAINTENANCE**

(a) In installing, operating and maintaining the Cable System, including equipment, cable and wires, the Licensee shall avoid damage and injury to trees, structures and improvements in and along the routes authorized by the Issuing Authority, except as may be approved by the Issuing Authority if required for the proper installation, operation and maintenance of such Cable System and its equipment, cable and wires.

(b) The construction, maintenance and operation of the Cable System for which this Renewal License is granted shall be done in conformance with all applicable laws, regulations and codes. All structures, lines, equipment, and connections, in, over, under and upon streets, sidewalks, alleys, and public ways and places of the Town, wherever situated or located, shall at all times be kept and maintained in a safe condition and in good order and repair.

(c) Upon written notice from the Issuing Authority, the Licensee shall remedy a safety deficiency within forty-eight (48) hours of receipt of notice and shall notify the Town when the deficiency has been corrected.

(d) Upon written request of the Issuing Authority, the Licensee shall provide copies of test results to the Issuing Authority.

#### **SECTION 4.2 - TREE TRIMMING**

The Licensee shall have authority to trim trees upon and overhanging public streets, alleys, sidewalks and ways and places of the Town so as to prevent the branches of such trees from coming in contact with the wires, cables and equipment of the Licensee, in accordance with applicable state law.

In installing, operating and maintaining equipment, cables and wires, the Licensee shall avoid all unnecessary damage to trees on public property in the Town and shall cut or otherwise prune such trees only to the least extent necessary and in accordance with generally applicable Town by-laws, if any. Regarding trees on private property, the Licensee shall make its best efforts to secure the permission of the property owner prior to reasonable tree trimming.

### **SECTION 4.3 - EMERGENCY REMOVAL OF PLANT**

(a) If, at any time, in case of fire or declared disaster in the Town, it shall be necessary in the reasonable judgment of the Issuing Authority to cut or move any of the wires, cable or equipment of the Cable System, the Town shall have the right to do so without cost or liability. In such case, the Town shall notify the Licensee of the wires, cables or equipment which have been cut or removed.

(b) In either case, the Licensee shall have the right to seek reimbursement under any applicable insurance other than the Town's insurance, or government program for reimbursement.

### **SECTION 4.4 - UNDERGROUND WIRING OF UTILITIES**

(a) In areas of the Town in which the telephone lines and electricity utility lines are currently, or in the future specified to be, underground, whether required by law or not, all of the Licensee's cable and wires shall be underground. When these facilities are both placed underground by the telephone and electric utility companies, at no charge to the Town, or are required to be placed underground by the Town, at the sole cost and expense of such telephone and electric utility companies, the Licensee shall likewise place its facilities underground, at no cost to the Town. The Town shall provide the Licensee with a minimum of eighteen (18) months prior written notice of undergrounding pursuant to this Section.

(b) The Licensee shall maintain membership and participate in the Massachusetts "DIG-SAFE" program.

### **SECTION 4.5 - PEDESTALS AND VAULTS**

In any cases in which pedestals, vaults and cabinets housing active and passive devices are to be utilized, in Town Public Ways or within the Town public lay-out, such pedestals, vaults and cabinets locations, if available, be shall be shown on the Cable System maps submitted to the Town in accordance with Section 3.6 herein.

### **SECTION 4.6 - RESTORATION TO PRIOR CONDITION**

Whenever the Licensee takes up or disturbs any pavement, sidewalk or other improvement of any Public Way or public place, it shall be replaced and the surface restored in as good condition as before entry as soon as practicable. If the Licensee fails to make such restoration within a reasonable time, the Issuing Authority may fix a reasonable time for such restoration and repairs and shall notify the Licensee in writing of the restoration and repairs required and the time fixed for performance thereof. Upon failure of the Licensee to comply within the specified time period, the Issuing Authority may cause proper restoration and repairs to be made and the reasonable expense of such work shall be paid by the Licensee upon demand by the Town.

### **Section 4.7 - COOPERATION WITH BUILDING MOVERS**

To the extent required by Massachusetts law, the Licensee shall, on the request of any person holding an appropriate permit issued by the Town, temporarily raise and lower its lines to permit the moving of any

building or other structure. The expense of such raising or lowering shall be paid by the Licensee, unless otherwise provided under law or regulation. The Licensee shall be given at least thirty (30) days advance notice of any such move, except in emergencies.

#### **Section 4.8 - RELOCATION OF FACILITIES**

The Licensee shall, at no charge to the Town, temporarily or permanently relocate in the same street or any other Public Way and places, any part of the Cable System when required by the Issuing Authority, or its designee(s), for good reason such as traffic, public safety, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power or signal lines or setting of new or replacement utility poles or the construction of any public improvement or structure. In this respect, the Licensee shall be treated on par with any affected utilities or user of the public ways or places within the Town.

#### **Section 4.9 - RELOCATION OF FIRE ALARMS**

The Licensee shall reimburse the Town at cost for any reasonable expense, including materials and labor caused by relocation of any fire alarm cable or equipment to make poles ready for the Licensee's truck, feederline and distribution system installation, maintenance and repair. The Town shall cooperate in this relocation so as to minimize delay in the Licensee's installation, maintenance and repair schedule.

#### **Section 4.10- RIGHT TO INSPECTION OF CONSTRUCTION**

The Issuing Authority or its designee shall have the right to inspect all construction, installation and/or upgrade work performed subject to the provisions of this License and to make such tests as it shall deem necessary to ensure compliance with the terms and conditions of this License and all other applicable law. The Town shall give reasonable prior notice of any inspection or test to the Licensee. The Licensee shall have the right to accompany the Town's inspectors during inspections or tests conducted in accordance with this Section.

#### **Section 4.11- PRIVATE PROPERTY**

The Licensee shall be subject to all laws and by-laws regarding private property in the course of constructing, upgrading, installing, operating and maintaining the Cable System in the Town. The Licensee shall promptly repair or replace all private property, real and personal, damaged or destroyed as a result of the construction, upgrade, installation, operation or maintenance of the Cable System. To the extent required by the Town's bylaws the installation and operation of the Licensee's Cable System shall not create any unreasonable disturbance or nuisance to private property in the Town.

#### **Section 4.12 - CONSTRUCTION PERSONNEL CONTACTS**

To the extent required by applicable bylaws, rules or regulations of the Town, the Licensee shall

provide the Issuing Authority with the names and addresses of any construction companies, or if operating as individuals, the names and addresses of such individuals, who will be sub-contracted by the Licensee to perform construction within the Town. Furthermore, to the extent required by applicable Town bylaws, rules or regulations, the Licensee shall, upon written request of the Issuing Authority, furnish the names of persons and their addresses and telephone numbers, serving as references for such sub-contractors.

#### **Section 4.13- NOTICE CONCERNING CONSTRUCTION ACTIVITIES**

The Licensee shall, on a bi-weekly basis during periods of active Cable System upgrade or rebuild in the Public Ways, if any, supply a plan of areas of the Town which will be upgraded or rebuilt in the following week to the Town's Chief of Police and DPW Director or their respective designee(s). The Licensee's construction teams which are working in the Public Way of the Town shall exert a good faith effort to identify themselves and their equipment as working for the Licensee.

## **ARTICLE 5 RATES AND PROGRAMMING**

### **SECTION 5.1 - BASIC SERVICE**

The Licensee shall make available a Basic Service tier. Such basic tier shall, at a minimum, consist of: 1) all television signals carried in fulfillment of the requirements of the Cable Act, including Sections 614 and 615, and 2) all active Public, Educational and Governmental ("PEG") Access channel(s).

### **SECTION 5.2 - PROGRAMMING**

(a) The Licensee shall use its best efforts to provide a wide diversity of alternative Programming options to Subscribers, including, the mix and quality required by federal law and regulations. The Licensee shall provide the following Cable Services: 1) all Broadcast stations required to be carried by federal law; and 2) Public, Educational and Governmental ("PEG") Access channel(s) required by this Renewal License. The Licensee shall provide written notice to all Town Subscribers at least thirty (30) days in advance of any Programming network changes for which notice is required pursuant to applicable federal or state law or regulation, including 207 CMR 10.02(2). Pursuant to the Cable Act, 47 U.S.C. 532 (b) (3), the Licensee shall make available channel capacity for commercial use by persons unaffiliated with the Licensee.

(b) Pursuant to, and in accordance with, applicable law, programming carriage decisions are at the sole discretion of the Licensee.

### **SECTION 5.3 - STEREO TV TRANSMISSIONS**

The Licensee shall transmit all of its signals to Subscribers in stereo, provided that such signals are available and furnished to the Licensee in stereo.

### **SECTION 5.4 - REMOTE CONTROL DEVICES**

The Licensee shall allow Subscribers to purchase from parties other than the Licensee, and to utilize remote control devices, which are compatible with the converter installed by the Licensee. The Licensee takes no responsibility for changes in its equipment that might make inoperable the remote control devices acquired by Subscribers. To the extent permitted by federal law, the Licensee may require a separate

charge for the use of the remote control capacity of its converters.

#### **SECTION 5.5 - INITIAL RATES**

Any changes in prices and notice to subscribers of such change will be in conformance with federal law, the rules and regulations of the FCC, and any currently or hereinafter applicable federal and/or state laws and regulations. For informational purposes only, the rates for all programming, installation and equipment in effect on the Effective Date of this Renewal License are listed in **Exhibit C** of this Renewal License.

#### **SECTION 5.6 - RATE RE-REGULATION**

The Issuing Authority reserves the right to regulate rates for cable service to the extent such regulation is allowed at this time, or hereafter, under the applicable federal and state law and regulations.

#### **SECTION 5.7 - COMMERCIAL ESTABLISHMENTS**

The Licensee shall be required to make Cable Service(s) when available to any commercial establishments in the Town provided that said establishment(s) agrees to pay for installation and monthly subscription costs as established by the Licensee. It is herein acknowledged that certain programming services may not be available to commercial establishments, pursuant to applicable law or the Licensee's agreements with its program suppliers.



## **ARTICLE 6**

### **PEG ACCESS CHANNEL(S) AND SUPPORT**

#### **SECTION 6.1 - PEG ACCESS CHANNEL(S)**

(a) The Licensee shall provide the Town or its designee two (2) PEG (Public, Educational, Government) Access channels for non-commercial use by residents of the Town, Town educational authorities, organizations serving the Town and Town government officials. One of the channels shall be used for educational access programming and the other for public/government Access programming. A third PEG access channel shall be provided to the Town by the Licensee upon a written request from the Issuing Authority. The Licensee shall have a right to request a hearing before the Issuing Authority regarding said request for said third access channel, however the final determination regarding the provision of said access channel, consistent with the terms herein, shall be made by the Issuing Authority in its sole discretion. Licensee shall have twelve (12) months following a written request from the Issuing Authority to make the channel available.

(b) Rules shall be established by the Issuing Authority or its designee(s) regarding PEG Access Programming, priority of use of the PEG Access channel(s), the prohibition of lottery information and obscene or indecent matter and record maintenance.

#### **SECTION 6.2 – PEG ANNUAL SUPPORT**

(a) The Issuing Authority or a non-profit and non-commercial charitable PEG Access Corporation (“Access Corporation”) designated by the Issuing Authority shall be responsible for providing public, educational and government (“PEG”) access programming, staffing, facilities and equipment to the residents of the Town, pursuant to the provisions of Article 6 beginning on October 1, 2003. From the Effective Date of this Renewal License through the date of the Ten Thousand Dollar (\$10,000) prepayment pursuant to Section 6.2(d), the Licensee shall continue operating the PEG operation in Whitman in the same

manner as currently operated by said Licensee. The Licensee shall, through its personnel, provide reasonable support and assistance to the Town or its designee (i.e. an Access Corporation) in the transition from a Licensee operated PEG operation to a Town and/or PEG Access Corporation operation.

(b) The Licensee shall provide annual funding (PEG Access Payments) to the Town and/or the Town's designee (such as an Access Corporation) for cable related needs, including PEG Access, as follows:

From October 1, 2003 thru December 31, 2004...	3.25% of the Licensee's Gross Annual Revenues
January 1, 2005 through December 31, 2005.....	3.50% of the Licensee's Gross Annual Revenues
January 1, 2006 through December 31, 2006.....	3.75% of the Licensee's Gross Annual Revenues
January 1, 2007 through September 23, 2013.....	4.0% of the Licensee's Gross Annual Revenues

(c) Said PEG Access Payments shall begin accruing on October 1, 2003 and shall be made on a quarterly basis as follows:

<b><u>Due Date</u></b>	<b><u>Quarter</u></b>
May 30th	January 1 - March 30
August 30th	April 1 - June 30
November 30th	July 1 - September 30
February 28th	October 1 - December 31

(d) The Licensee shall on or about October 15, 2003, provide the Town with a prepayment of Ten Thousand Dollars toward the amount to be paid for the first quarterly payment (February 28, 2004). The Ten Thousand Dollars (\$10,000) prepayment shall be deducted from the amount otherwise owed to the Town for said first quarterly payment.

(e) The Licensee shall make a final quarterly PEG Access payment on November 30, 2013.

(f) In the event that Licensee makes the above payment(s) later than fourteen (14) days after the designated date(s), the Issuing Authority may notify Licensee in writing that interest is due on such late payment from the due date, which shall accrue at the Prime rate of Fleet Bank (or its successor) plus two percent (2%).

(g) The Licensee shall file with each of the payments pursuant to this Section 6.2 a statement certified by an authorized representative of the Licensee documenting, in reasonable detail, the total of all Gross Annual Revenue of the Licensee during the applicable period of time. If the Licensee's payment was less than required for the reporting period, the Licensee shall pay any balance due to the Town and/or its designee no later than its subsequent quarterly payment. Said statement shall list all of the general categories comprising Gross Annual Revenues as defined in Section 1.1 (j) supra.

### **SECTION 6.3 – REPORT OF DISBURSEMENTS**

Upon written request by the Licensee, the Town shall provide, within one hundred twenty (120) days, a written report of actual disbursements made of the funds provided by the Licensee, pursuant to this Renewal License and applicable federal and state law. If upon review of the financial records, the Licensee determines expenses were not related to a use allowed pursuant to the Renewal License, the Licensee shall refer the matter to the Issuing Authority or its designee who shall investigate said complaint, and report its findings to the Licensee. If the Issuing Authority or its designee determines that funds were misused, it shall take appropriate corrective action for future compliance. If a subsequent violation should occur, a public hearing may be held to address said violation and review procedures for proper use and accounting procedures.

### **SECTION 6.4 - ACCESS FACILITIES AND EQUIPMENT**

(a) The Licensee shall, as soon as reasonably possible, but in no event later than December 31, 2003, transfer and convey to the Town of Whitman or its designee, by quitclaim deed, all right, title and interest in the land and building(s) (the "Premises") at 115 South Avenue, Whitman, Massachusetts (the location of the current "Comcast Studio") for consideration of One Dollar (\$1.00). Until said transfer, the Town and/or its designee shall continue to have full use of the facility.

(b) The Licensee shall, no later than September 30, 2003, transfer and convey to the Town or its designee, for consideration of One Dollar (\$1.00) all company owned PEG Access production and associated equipment located within Whitman, including at the Comcast Studio in Whitman and at the Whitman Town Hall, excluding signal transport equipment owned by the Licensee. Such equipment shall be solely owned, operated, repaired, relocated and maintained by the Town or a designated Access Corporation.

(c) In order to further procure, maintain, renovate, improve and develop PEG Access equipment, as well as other Town and/or Access Corporation cable related costs, The Licensee shall make a one-time payment of Two Hundred Thousand Dollars (\$200,000), on or before November 30, 2003, to the Town and/or its designee (i.e. Access Corporation), which shall be expended at the Issuing Authority's or its designee's sole discretion. Said funds, if provided directly to the Town, shall be provided on the condition that they be paid into a restricted account, and not into the Town's general fund, restricted to the above purposes.

(d) The Licensee shall not be responsible for equipment owned by the Town or its designee (i.e. the Access Corporation), including, but not limited to, any maintenance, repair, or replacement thereof.

(e) Under no circumstances shall the transfer of the "Premises", nor any payment made by the Licensee pursuant to this Section 6.4, be counted against (1) the PEG annual support payable to the Town and/or its designee pursuant to Section 6.2 above and/or any licensee fee(s) payable to the Town.

#### **SECTION 6.5 - SYSTEM MAINTENANCE OF CHANNELS**

The Licensee shall monitor the downstream PEG Access Channels on the Subscriber Network and the upstream and downstream Video Return Line channels for technical quality. Said channels shall be maintained at standards equal to those which apply to the Cable System's non-PEG Access Channels; provided, however, that this Section 6.5 shall not require the Licensee to guarantee the technical quality of PEG Access Programming or user productions. The Issuing Authority shall notify the Licensee if there is an apparent pattern of problems regarding signal quality on the PEG Access Channels, and shall report such finding to the Licensee in writing. Upon the Issuing Authority's written finding and written notice of a pattern of PEG Access Channel signal quality problems (three or more similar or related problems within a 30 day period), Licensee shall meet with the Issuing Authority or its designee within five (5) business days of receipt of a written request to discuss such problem and the Licensee's designated, qualified Cable System plant manager, cable system engineer, or their designee(s). Such plant manager, engineer or their designee's discussion should at a minimum investigate the matter and prepare a written technical report on same. Said written report shall include necessary remedial actions, if necessary, for the Issuing Authority and the Licensee shall take such steps as necessary to rectify any signal quality concern(s) not in compliance with FCC signal quality standards. Upon written request of the Issuing Authority, the Licensee shall provide signal quality test results showing compliance of the Whitman Cable System and the requisite compliance of all its channels with the FCC's signal quality requirements set forth in 47 CFR, Subpart K, 76.601 et al (**Exhibit D**). The Licensee shall provide the aforesaid report within thirty (30) days of a written Issuing Authority request, unless otherwise agreed to by the Issuing Authority and the Licensee. Where the Licensee reports compliance with 47 CFR 76.601 but the Issuing Authority has substantial technical evidence of the PEG Access Channels access channels not carrying video with signal quality equal comparable to the signal quality of other channels on the Cable System, the Licensee shall meet with the Issuing Authority as reasonably needed and investigate and report on the cause and possible remedy for

said problem. In the event the Town and the Licensee mutually agree to hire (equally sharing costs) a third party Cable System engineer to test the Cable System (and such agreement shall not be unreasonably withheld), and such tests reasonably prove non-compliance with FCC signal quality standards, the Licensee shall pay the costs for such test.

#### **SECTION 6.6 - HUBSITE**

The Licensee maintains signal transport equipment for Whitman and Hanson at 115 South Avenue, Whitman, Massachusetts and shall have the right to continue to maintain said equipment at this location, at no charge to the Licensee, subject to the provisions of this Section. The Town and/or its designee shall allow access to this equipment by the Licensee. Except for emergency situations, the Licensee shall notify the Town or its designee prior to accessing the equipment. This equipment, and access thereto by or for the Licensee, shall be subject to the indemnification provisions of Section 9.1 and the insurance provisions of Section 9.2. The insurance certificate shall specifically reference this signal transportation equipment. The Licensee requires twelve (12) months notice in order to relocate this equipment.

### **ARTICLE 7**

## **CUSTOMER SERVICE AND CONSUMER PROTECTION**

#### **SECTION 7.1 - CUSTOMER SERVICE**

(a) The Licensee shall provide and maintain a toll-free 24-hour answering line which Subscribers may call without incurring added message units or toll charges. At the time of initial subscription the Licensee shall give each new subscribing household a notice of billing practices and dispute procedures, which notice shall include the Licensee's telephone number.

(b) Upon reasonable notice, the Licensee shall expeditiously investigate and resolve complaints regarding the quality of service, equipment malfunctions and similar matters. The Licensee shall also maintain records of all reported complaints and action taken to respond to such complaints and shall make such records available to the Issuing Authority, or designee, for inspection upon request, but shall also comply with Subscribers' privacy rights in accordance with federal law.

(c) The Licensee shall respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible. A serious system malfunction will be serviced as soon as possible after its discovery.

(d) Unless otherwise provided for under applicable laws or regulations, the Licensee shall remove all Subscriber aerial Drop cable(s), within fourteen (14) days of receiving a written request from the owner of the home in which a Subscriber decides to do so.

(e) The Licensee shall comply with all customer service regulations of the FCC (including 47 CFR §76) as they exist or as they may be amended from time to time. Likewise, the Licensee shall

comply with all applicable customer service regulations promulgated by the Commonwealth of Massachusetts, including by the Cable Division, as they exist or as they may be amended from time to time.

(f) The Licensee shall maintain and operate a customer service office, at a location (which does not have to be within the Town of Whitman) as determined by the Licensee, for general purposes including accepting payments, return and/or exchange of equipment and receiving complaints, including without limitation, those regarding service, equipment malfunctions or billing and collection disputes. The Licensee's customer service office shall be operated at such times that reasonably serve Subscribers.

## **SECTION 7.2 - CONSUMER COMPLAINT PROCEDURES**

The Licensee shall establish a procedure for resolution of complaints by Subscribers. Upon reasonable notice, the Licensee shall expeditiously investigate and resolve all complaints regarding the quality of service, equipment malfunctions and similar matters. In the event that a Subscriber is aggrieved, the Issuing Authority shall be responsible for receiving and acting upon Subscriber complaints and/or inquiries, as follows:

(a) Upon written request of the Issuing Authority the Licensee shall, within ten (10) days after receiving a complaint, send a written report to the Issuing Authority with respect to any complaint. Such report shall provide a full explanation of the investigation, finding and corrective steps taken by the Licensee.

(b) Should a Subscriber have an unresolved complaint regarding cable television operations, the Subscriber shall be entitled to file his or her complaint with the Issuing Authority or its designee, who shall have primary responsibility for the continuing administration of this Renewal License. The Subscriber shall thereafter meet jointly with the Issuing Authority or its designee and a representative of the Licensee, within thirty (30) days of the Subscriber's filing of his or her complaint, in order to discuss such matter. The Licensee shall notify each new Subscriber, at the time of initial subscription to Cable Service, of the procedures for reporting and resolving all such complaints.

(c) Notwithstanding the foregoing, if the Issuing Authority or its designee determines it to be in the public interest, the Issuing Authority or its designee may investigate any complaints or disputes brought by Subscribers arising from the operations of the License.

## **SECTION 7.3 - INSTALLATION AND SERVICE CALLS**

(a) The Licensee shall install new aerial Cable Service to areas of the Town to those residents requesting standard installation Cable Service, whose homes are passed by the Cable System within seven

(7) business days of a Subscriber's request. Standard underground installations for said residents requesting service whose homes are passed by the Cable System shall be completed within fifteen (15) calendar days, weather permitting, but if the Town imposes a moratorium on underground installations, Licensee shall be given additional time as reasonably needed.

(b) In arranging appointments for installations or service calls, the Licensee shall comply with applicable law and regulation, including 47 C.F.R. §76.309. The Licensee shall make reasonable efforts to provide installations and service calls at times convenient to Subscribers.

#### **SECTION 7.4 - BILLING AND TERMINATION PROCEDURES/INFORMATION**

Licensee shall comply with the regulations of the Cable Division, including 207 CMR 10.00 et seq., as those regulations may be amended from time to time. A copy of 207 CMR 10.00 is attached hereto as **Exhibit E**.

#### **SECTION 7.5 - PARENTAL CONTROL CAPABILITY**

The Licensee shall provide Subscribers, upon request, with the capability to control the reception of any channels being received on their television sets. Where Converters are utilized, there shall be no separate charge, unless otherwise permitted by applicable federal and state law and regulation, other than the price normally charged by the Licensee for the Converter itself, for such parental control capability. The Licensee shall advise potential Subscribers of the availability of such parental control.

#### **SECTION 7.6 - PROTECTION OF SUBSCRIBER PRIVACY**

The Licensee shall comply with all privacy provisions of applicable federal and state laws and regulations, including, but not limited to, the provisions of Section 631 of the Cable Communications Policy Act of 1984 and Title 18 United States Code, Section 2520.

#### **SECTION 7.7 - INFORMATION WITH RESPECT TO VIEWING HABITS AND SUBSCRIPTION DECISIONS**

Except as permitted by Section 631 of the Cable Act, neither the Licensee or its agents nor its employees shall make available to any third party including the Town, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, the Licensee shall notify the Subscriber as soon as practicable, unless such notification is prohibited by applicable law or the court.

#### **SECTION 7.8 - SUBSCRIBER'S RIGHT TO INSPECT AND VERIFY INFORMATION**

(a) Licensee shall make available for inspection by a Subscriber at a reasonable time and place all personal Subscriber information that Licensee maintains regarding said Subscriber.

(b) A Subscriber may obtain from Licensee a copy of any or all of the personal Subscriber

information regarding him or her maintained by Licensee. Licensee may require a reasonable fee for making said copy.

(c) A Subscriber or user may challenge the accuracy, completeness, retention, use or dissemination of any item of personal Subscriber information. Such challenges and related inquiries about the handling of Subscriber information, shall be directed to Licensee. The Licensee shall change any such information upon a reasonable showing by any Subscriber that such information is inaccurate.

#### **SECTION 7.9 - EMPLOYEE IDENTIFICATION CARDS**

All of Licensee's employees and agents entering private property, in connection with the construction, installation, maintenance and/or operation of the Cable System, including repair and sales personnel, shall be required to wear or provide an employee photo-identification card issued by the Licensee.

#### **SECTION 7.10 - ENCODING OF NON-PREMIUM SERVICE**

To the extent provided for by applicable law, Licensee shall not encode or scramble Basic Cable Service. To the extent permitted by Federal law, Licensee may encode Service. Prior to encoding any service, Licensee shall take reasonable efforts to inform Subscribers about the probable effects such encoding may have upon the use of home video equipment such as "cable-ready" television sets.

#### **SECTION 7.11 - WIRING BY SUBSCRIBER**

(a) Subscribers, or a qualified contractor at the Subscriber's expense, shall be permitted to install cable for Cable System interconnection only within any building which they own. Such installation shall be conditioned upon and shall conform to all applicable building and electrical codes;

(b) If the Licensee makes a service/repair visit because of a reported problem and subsequently determines that the problem was caused by wiring and/or improper equipment installed by the Subscriber, the Licensee may assess a maintenance service charge to the Subscriber.

(c) Should the Licensee notify Subscriber in writing that a directly connected device is causing harm or interference to the Cable System, the Licensee may require that the Subscriber discontinue use of and disconnect service. In all such cases the Licensee shall promptly notify the Subscriber in writing of the discontinuance, and of his/her right to bring the actions of the Licensee to the attention of the Issuing Authority.

(d) Should any Subscriber-installed equipment permanently damage any of the Licensee's equipment, the Subscriber shall be liable for the repair or replacement costs of such equipment.

#### **SECTION 7.12 - VOLUNTARY DISCONNECTION OF SERVICE**

In accordance with applicable law, Subscribers who request termination of an addressable cable



service shall not be responsible for charges for such termination. Subscribers who request full disconnection of Cable Service shall not be responsible for further charges for such Cable Service upon actual termination of Cable Service or after seven (7) days notice to Licensee, whichever occurs first. Licensee shall make a good faith effort to fully disconnect service as soon as possible after requested to do so by a Subscriber.

### **SECTION 7.13 - REMOVAL OF ANTENNAS**

Licensee shall not remove any television antenna of any Subscriber but shall offer to said Subscriber and maintain an adequate switching device ("A/B Switch") to allow said Subscriber to choose between cable and non-cable television reception.

## **ARTICLE 8 LICENSE FEES AND PAYMENTS TO THE TOWN**

### **SECTION 8.1 - LICENSE FEE PAYMENTS**

(a) Pursuant to Massachusetts General Laws Chapter 166A, Section 9, the Licensee shall pay to the Town, throughout the term of the Renewal License, a License Fee equal to fifty cents (\$.50) per Subscriber per year, or such other amounts as may in the future be allowed pursuant to State and/or federal law. The number of Subscribers, for purposes of this Section, shall, in accordance with applicable law, be calculated on the last day of each year of the term of this Renewal License.

(b) The Licensee shall not be liable for a total financial commitment pursuant to this Renewal License and applicable law in excess of five percent (5%) of its Gross Annual Revenues; provided, however, that said five percent (5%) shall also include the PEG Access Annual Support (Section 6.2), but shall not include the following: (i) PEG Access Facilities and Equipment (Section 6.4); (ii) any interest due herein to the Town because of late payments; (iii) and any other exclusion to the term "franchise fee" pursuant to Section 622(g)(2) of the Cable Act.

(c) Payment of the License fee to the Town pursuant to the provisions of this License shall not be considered in the nature of a tax, but shall be in addition to any and all taxes of general applicability which are now or may be required hereafter to be paid by any law of the Commonwealth of Massachusetts or the United States.

(d) The License Fees shall be paid annually to the Town throughout the term of the Renewal License, not later than March 15<sup>th</sup> of each year, unless provided for otherwise under applicable law.

## **SECTION 8.2 - RECOMPUTATION**

(a) Tender or acceptance of any payment by the Town shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payments be construed as a release of any claim that the Issuing Authority may have for additional sums including interest payable pursuant to this Renewal License.

(b) If the Issuing Authority has reason to believe that any such payment(s) are incorrect, the Licensee shall have thirty (30) days after a request from the Issuing Authority to provide the Town with additional information documenting and verifying the accuracy of any such payment(s). In the event that the Issuing Authority does not believe that such documentation supports the accuracy of such payment(s), the Issuing Authority may conduct an audit of such payment(s). If, after such audit and recomputation, an additional fee is owed to the Town, such fee shall be paid within thirty (30) days after such audit and recomputation. The Town's right to audit pursuant to this Section shall be limited to one year from the date payment was tendered by the Licensee.

## **SECTION 8.3 - AFFILIATES USE OF SYSTEM**

The Licensee shall not permit the use or operation of the Cable System by affiliates which result in a diversion of revenues from the operation of the Cable System to the detriment of the Town under this Renewal License.

## **SECTION 8.4 - METHOD OF PAYMENT**

All License Fee payments by the Licensee to the Town pursuant to the Renewal License shall be made payable to the Town and provided to the Town Administrator or the Administrator's designee.

## **ARTICLE 9 REGULATORY OVERSIGHT**

### **SECTION 9.1 - INDEMNIFICATION [SEE G.L.c. 166A §5(b)]**

At its sole cost and expense, the Licensee shall indemnify, defend and hold the Town, its officials, employees and agents harmless at all times during the term of this Renewal License, and including the time for removal of the Cable System as provided herein, from any and all claims, including injury or damage to persons or property, both real and personal, arising during the term of this Renewal License and including the time for removal of the Cable System as provided herein, caused by the construction, installation, operation or maintenance of the Cable System, including any structure, equipment, wire or cable installed pursuant to this Renewal License. The Town shall give the Licensee reasonable notice of any such claim.

### **SECTION 9.2 - INSURANCE [SEE G.L.c. 166A §5(c)]**

At all times during the term of the Renewal License, including the time for removal of facilities provided for herein, the Licensee shall obtain, pay all premiums for, and file with the Issuing Authority, upon expiration, copies of the certificates of insurance for the following policies:

(a) A general comprehensive and property liability policy on all claims on account of injury to or death of a person or persons occasioned by the construction, installation, maintenance or operation of the Cable System or alleged to have been so occasioned, with a minimum liability of One Million Dollars (\$1,000,000) per person in any one occurrence. The policy shall provide blanket contractual liability

insurance for all written contracts, independent contractor's liability, coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(b) Automobile liability insurance for all claims arising out of the operation of motor vehicles in the amount of:

(i) One Million Dollars (\$1,000,000.00) for bodily injury and consequent death per occurrence;

(ii) Five Hundred Thousand Dollars (\$500,000.00) for property damage per occurrence.

(c) Workers Compensation in the minimum amount of the statutory limit.

(d) The Licensee shall carry excess liability in the minimum amount of Five Million Dollars (\$5,000,000.00) umbrella form over the insurance required by this Section 9.1(a) and (b) of this Section.

(e) The following conditions shall apply to the insurance policies required herein:

(i) All insurance shall commence no later than the Effective Date of the Renewal License.

(ii) All insurance and insurance policies shall name the Town as an additional insured.

(ii) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions.

(iv) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the Commonwealth of Massachusetts.

(v) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required herein.

(vi) The Licensee's failure to obtain, to procure or maintain the required insurance shall constitute a material breach of the Renewal License under which the Town may require, and the Licensee shall, immediately suspend operations under the Renewal License. After suspension of this Renewal License for this reason, if all

the insurance  
required herein  
is not in place,  
with certificates  
of service  
evidencing  
such, within  
fourteen (14)  
days of receipt  
of the notice of  
suspension, the  
Issuing  
Authority may  
immediately  
terminate this  
License without  
recourse to the  
procedures  
established in  
Section \_\_\_\_,  
below.

### **SECTION 9.3 - PERFORMANCE BOND**

(a) The Licensee shall maintain throughout the duration of this Renewal License and any removal period pursuant to G.L.c. 166A, §5(f) a performance bond in the amount of Fifty Thousand Dollars (\$50,000) running to the Town with a surety company satisfactory to the Issuing Authority. Said bond shall provide surety that the Renewal Licensee shall observe, fulfill and perform each material term and condition of this License and that in case of any failure to substantially comply with any material term and/or condition contained herein, the amount thereof shall be recoverable from said performance bond by the Town for all amounts resulting from the failure of Licensee to comply with any material term or condition in this License. The Town shall give the Licensee twenty (20) business days notice of its intent to draw upon the bond.

(b) The performance bond shall be effective throughout the term of this Renewal License including the time for removal of facilities provided for herein, and shall be on the condition that in the event that Licensee shall fail to substantially comply with any one or more material term or condition of this Renewal License, or to substantially comply with any material order, permit or direction of any department, agency, commission, board, division or office of the Town having jurisdiction over its acts, or to pay any claims, liens due the Town which arise by reason of the construction, maintenance, operation or removal

of the Cable System, the Town shall recover from the surety of such bond all damages and costs up to the limits insured by such bond, suffered by the Town. Said condition shall be a continuing obligation of this Renewal License, and thereafter until Licensee has satisfied all of its obligations to the Town that may have arisen from the grant of this Renewal License or from the exercise of any privilege therein granted. Neither this section, any bond accepted pursuant thereto, or any damages recovered thereunder shall limit the liability of Licensee under this Renewal License.

(c) The Licensee shall not reduce the amount or cancel said bond with out replacement thereof with another bond in accordance with the minimum bond requirements of this Section, or materially change the terms of said bond from the provisions of Section 9.3(a) herein without the Issuing Authority's prior written consent, which consent shall not be unreasonably denied or delayed.

#### **SECTION 9.4 - REPORTS [SEE G.L.c. 166A §§8 and 10]**

(a) Subscriber Complaint Report: To the extent required by regulations of the Division, the Licensee shall submit completed copies of the Division Form 500 to the Issuing Authority no later than thirty (30) days after the date which such reports are required for filing at the Division. The Licensee shall record all written and verbal Complaints of its Subscribers on said forms.

(b) Financial Reports: To the extent required by law or upon written request from the Issuing Authority, the Licensee shall furnish the Issuing Authority, on March 15<sup>th</sup> of each year, Division Forms 200 and 400.

(c) In addition, the Licensee shall maintain for public inspection all records required by applicable law or regulation, including by the FCC and as specified in 47 CFR §76.305 in the manner prescribed therein.

#### **SECTION 9.5 - INFORMATION REQUESTS AND RIGHT TO INSPECT RECORDS AND FACILITIES**

(a) Upon written request of the Issuing Authority, the Licensee shall promptly submit to the Issuing Authority information regarding this Renewal Licensee, its business and operations related to the Cable System, or any affiliated Person with respect to the Cable System, in such form and containing such detail as may be reasonably requested and specified by the Issuing Authority pertaining to the subject matter of this License which may be reasonably required to establish the Licensee's compliance with its obligations pursuant to this License.

(b) If the Licensee believes that the documentation requested by the Issuing Authority

involves proprietary information, then the Licensee shall submit the information to its counsel, who shall confer with the Town Counsel for a determination of the validity of the Licensee's claim of a proprietary interest. If the Town Counsel agrees that the material is of a proprietary nature, the information furnished shall not be a public record, but the Licensee shall make it available to the Issuing Authority at times convenient for both parties.

(c) Upon reasonable notice, the Issuing Authority may visit the places of business and other premises and examine the records of the Licensee and facilities of the Licensee located within the Region to determine if all rules, regulations and orders of the Town, all provisions of this License and all other legal requirements are being complied with.

## **SECTION 9.6 - ANNUAL PERFORMANCE HEARINGS**

The Issuing Authority may conduct annual public hearings with the Licensee to review the Licensee's performance under this Renewal License. Said hearings shall be conducted in accordance with applicable open meeting rules, regulations and laws. The Licensee shall cooperate fully with the Issuing Authority, or its designee, in connection with any such hearing and produce any documents related to compliance with this Renewal License, or other materials that are reasonably requested by the Issuing Authority or its designee. Upon completion of such public hearings and within sixty (60) days, the Issuing Authority shall provide for the public record a written report detailing the hearing findings regarding Licensee's performance under this Renewal License.

## **SECTION 9.7 - ANNUAL PERFORMANCE TEST**

The Licensee shall perform all proof of performance tests required by federal and state law and regulations, including 47 CFR subpart K, 76.601 et al. The results of such tests shall, upon written request, be submitted to the Issuing Authority. The records of said reports shall include without limitation, the name of the engineer who supervised the test; a description of test equipment and procedures used; measurement of locally receivable signals, an assessment of the picture quality available from the access equipment; the weather conditions under which tests were taken; measurements of Cable System performance, a statement of Licensee's adherence to performance standards, and if said standards are not satisfactorily met, a statement as to what corrective action is to be taken.

## **SECTION 9.8 - DUAL FILINGS**

Upon the Issuing Authority's written request, the Licensee shall make available to the Issuing Authority, and copy at the Licensee's expense, copies of any petitions or communications with any State or federal agency or commission pertaining to any material aspect of the Cable System operation hereunder.

## **SECTION 9.9 - ADDITIONAL INFORMATION**

At any time during the term of this Renewal License upon the reasonable written request of the Issuing Authority, the Licensee shall not unreasonably deny any aspects for further information which may be required to establish the Licensee's compliance with its obligations pursuant to this License.

## **SECTION 9.10 - INVESTIGATION**

Subject to applicable law and regulation, the Licensee shall cooperate fully and faithfully with any lawful investigation, audit, or inquiry conducted by a Town governmental agency; provided, however that any such investigation, audit or inquiry is for the purpose of establishing the Licensee's compliance with obligations pursuant to this Renewal License.

## **SECTION 9.11 - EQUAL EMPLOYMENT OPPORTUNITY**

The Licensee is an Equal Opportunity Employer and, pursuant to 47 CFR §76.311 and other applicable regulations of the FCC, must file an Equal Employment Opportunity Plan with the FCC and otherwise comply with the FCC regulations with respect to Equal Employment Opportunities. The Licensee has filed its current plan with the FCC and agrees to abide by such plan.

## **SECTION 9.12 - REVOCATION OF LICENSE**

This Renewal License may be revoked, in accordance with applicable law, by the Issuing Authority in the event the Licensee fails to comply with any material provision of this Renewal License.

## **SECTION 9.13 - NOTICE AND OPPORTUNITY TO CURE**

Prior to instituting any action against the Licensee under either Section 9.3 (Performance Bond) or Section 9.12 (Revocation of License), the Issuing Authority shall notify the Licensee, in writing, of specific failure and shall give the Licensee thirty (30) days, or such longer time as may be granted by the Issuing Authority in its reasonable discretion, in which to appear before representatives of the Town to discuss Licensee's plans to rectify such failure, and shall not proceed further if the matter is resolved to the reasonable satisfaction of the Issuing Authority within the specified time period. No decision by the Issuing Authority or the Town to invoke any remedy available pursuant to this Renewal License or under law shall preclude the availability of any other such remedy. Failure of the Town to enforce the performance of any term of this License shall not be deemed a waiver of its right to insist upon the subsequent performance of that term.

## **SECTION 9.14 - RIGHT OF REVIEW**

Prior to pursuing review under state or federal law, the parties may agree to arbitration under the rules of the American Arbitration Association.



## **SECTION 9.15 - INCORPORATION BY REFERENCE**

(a) All presently and hereafter applicable conditions and requirements of federal and state laws and regulations and local bylaws, including but not limited to Massachusetts General Laws, Chapter 166A, and the rules and regulations of the FCC and the Cable Division, as they may be amended from time to time, are incorporated herein by reference, to the extent not enumerated herein. All such laws, rules, and regulations, as amended, shall control the performance of this Renewal License to the extent that any provision of this Renewal License conflicts with such laws, rules or regulations.

(b) Should the Commonwealth of Massachusetts, the federal government or the FCC require the Licensee or the Town to perform or refrain from performing any act the performance or non-performance of which is in conflict with any provisions herein, the Issuing Authority and the Licensee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

## **ARTICLE 10 MISCELLANEOUS**

### **SECTION 10.1 - SEVERABILITY**

If any section, paragraph, term or provision of this License is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction thereof, such determination shall have no effect on any other section, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of this Renewal License or any renewal or renewals hereof.

### **SECTION 10.2 - FORCE MAJEURE**

If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this License, the term "force majeure" as used herein shall have the following meaning: strikes; acts of god; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Massachusetts or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; landslides; lightning; earthquakes; tornadoes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts, arrests; civil disturbances; explosions; partial or entire failure of utilities; unavailability of essential equipment, services and/or materials beyond the control of the Licensee or Town; or any other cause or event not reasonably within the Licensee's or Town's control.

### **SECTION 10.3 - NOTICES**

Every notice to be served upon the Issuing Authority shall be delivered or sent by certified mail

(postage prepaid) to Attn: Board of Selectmen, Town of Whitman, 54 South Avenue, Whitman, MA, 02382 with a copy to the Town Administrator at the same address or such other address as the Issuing Authority may specify in writing to the Licensee. Every notice served upon the Licensee shall be delivered or sent by certified mail (postage prepaid) to Attn: Director of Government & Legal Affairs, Comcast, 440 Myles Standish Blvd. Taunton, MA 02780 with a copy to Attn: Vice President, Corporate Counsel, Comcast, 6 Campanelli Drive, Andover, MA 01810-1095, or such other address as the Licensee may specify in writing to the Issuing Authority. The delivery shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **SECTION 10.4 - ENTIRE AGREEMENT**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed without written amendment.

#### **SECTION 10.5 - CAPTIONS**

The captions to sections throughout this Renewal License are intended solely to facilitate reading and reference to the sections and provisions of the Renewal License. Such sections shall not affect the meaning or interpretation of the Renewal License.

#### **SECTION 10.6 - WARRANTIES**

The Licensee warrants, represents and acknowledges that, as of the date of execution of this Renewal License:

- (a) The Licensee is duly organized, validly existing and in good standing under the laws of the State;
- (b) The Licensee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the date of execution of this Renewal License, to enter into and legally bind the Licensee to this Renewal License and to take all actions necessary to perform all of its obligations pursuant to this Renewal License;
- (c) This Renewal License is enforceable against the Licensee in accordance with the provisions herein; and
- (d) There is no action or proceedings pending or threatened against the Licensee which would interfere with performance of this Renewal License.

#### **SECTION 10.7 - APPLICABILITY OF RENEWAL LICENSE**

All of the provisions in this Renewal License shall apply to the Town, the Licensee, and their respective successors and assigns.

#### **SECTION 10.8 - ACTS OR OMISSIONS OF AFFILIATES**

During the term of this License, the Licensee shall be liable for the acts or omissions of its affiliates while such affiliates are involved directly or indirectly in the construction, installation, maintenance or operation of the Cable System as if the acts or omissions of such affiliate were the acts or omissions of the Licensee.

#### **SECTION 10.9 - STATEMENT OF THE LICENSE**

By executing this License, the Licensee represents that at the time of execution hereof, the performance of all terms and conditions in this License is commercially practicable. Any proceedings undertaken by Licensee to modify this License shall not stay performance of obligations under this License during the pendency of such proceedings.

#### **SECTION 10.10 - JURISDICTION**

Exclusive jurisdiction and venue over any dispute, action or suit pursuant to any Article herein shall be in a court of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgement and for the resolution for any dispute, action, or suit arising in connection with the entry of such judgement.

#### **SECTION 10.11 - TOWN'S RIGHT OF INTERVENTION**

The Town hereby reserves to itself, and the Licensee acknowledges the Town's right as authorized by applicable law or regulation, to intervene in any suite, action or proceeding involving this License, or any provision in this License.

#### **SECTION 10.12 - LICENSE EXHIBITS**

The Exhibits to this Renewal License, attached hereto, and all portions thereof, are incorporated herein by reference and expressly made a part of this Renewal License.

#### **SECTION 10.13 -TERM**

All obligations of the Licensee and the Issuing Authority set forth in this License, except as set forth herein differently, shall commence upon the execution of this License and shall continue for the term of the License except as expressly provided for herein.

**SIGNATURE PAGE**

In Witness Whereof, this Renewal License is hereby issued by the Board of Selectmen of the Town of Whitman, Massachusetts, as Issuing Authority, and all terms and conditions are hereby agreed to by Comcast of Massachusetts I, Inc.

Witness Our Hands and Official Seal, this 30th of September, 2003.

**TOWN OF WHITMAN**

By:

---

Daniel E. Holbrook, Chairman

---

Carl F. Kowalski, Selectmen

---

Margaret C. McGillivray, Selectmen

---

Beth M. Stafford, Selectmen

---

Daniel L. Salvucci, Selectmen

Approved as to legal form:

---

William H. Solomon  
Special Cable Counsel

**COMCAST OF MASSACHUSETTS I, INC.**

---

Kevin Casey  
Senior Vice President  
Northeast Region

## **EXHIBIT A**

### **PUBLIC/MUNICIPAL BUILDINGS ON THE RESIDENTIAL NETWORK**

#### Public School Buildings:

John H. Duval School	66 Regal Street
Louise A. Conley School	100 Forest Street
Park Avenue School	305 Park Avenue
Whitman Hanson Regional High School	600 Franklin Street
Whitman Middle School	Corthell Avenue

#### Municipal Buildings:

Access Studio	115 South Avenue
Armory Building	70 Legion Parkway
COA-Senior Center	16 Hayden Street
Corthell Building	Whitman Avenue
DPW Garage	Essex Street
DPW Office	100 Essex Street
Fire Department	56 Temple Street
Harvard Court Housing Authority	Harvard Court
Holt Building	South Avenue
Police Department	39 Whitman Avenue
Stetson Housing Authority	Harvard Court
Town Hall	54 South Avenue
Whitman Public Library	100 Webster Street

## **EXHIBIT B**

### **VIDEO RETURN LINE DROPS**

#### Public School Buildings:

John H. Duval School	66 Regal Street
Louise A. Conley School	100 Forest Street
Park Avenue School	305 Park Avenue
Whitman Hanson Regional High School	600 Franklin Street
Whitman Middle School	Corthell Avenue

#### Municipal Buildings:

Access Studio	115 South Avenue
Armory Building	70 Legion Parkway
COA-Senior Center	16 Hayden Street
Corthell Building	Whitman Avenue
DPW Garage	Essex Street
DPW Office	100 Essex Street
Fire Department	56 Temple Street
Harvard Court Housing Authority	Harvard Court
Holt Building	South Avenue
Police Department	39 Whitman Avenue
Stetson Housing Authority	Harvard Court
Town Hall	54 South Avenue
Whitman Public Library	100 Webster Street

## EXHIBIT C



Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003

## EXHIBIT D

Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003



Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003

## EXHIBIT E

Whitman Renewal License - Comcast  
September 30, 2003

Whitman Renewal License - Comcast  
September 30, 2003